Table of Contents

IAB # SH2373483

- Foot Pursuit Evaluation Form
- East Los Angeles Station In-Service, PM Shift, dated 1/24/2015

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

"A Tradition of Service"

OFFICE CORRESPONDENCE

DATE: August 31, 2016

FROM: KELLEY S. FRASER, COMMANDER
SOUTH PATROL DIVISION

TO: MATTHEW J. BURSON, CAPTAIN
OPERATION SAFE STREETS

SUBJECT: EXECUTIVE FORCE REVIEW COMMITTEE FINDINGS

Case Number:	SH2373483
Incident:	Hit Shooting
Incident Date:	January 24, 2015
Unit:	Operation Safe Streets
Suspect(s):	[redacted] MH[redacted]
Involved Employees:	Deputy Jesse Lucero [redacted]
EFRC Date:	August 25, 2016

The Executive Force Review Committee (EFRC) consisting of Commanders Kelley S. Fraser, John S. Benedict, and Ralph J. Webb met and reviewed the above case.

FINDINGS:

The EFRC determined the use of force and tactics were within Department policy.

RECOMMENDATIONS:

The EFRC made no recommendations.

KSF:TLB:tlb



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

SCOTT K. GOODWIN • Director

September 10, 2015

Captain Rod Kusch
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

RE: J.S.I.D. File #15-0042
L.A.S.D. File #015-01062-0278-055

Dear Captain Kusch:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 24, 2015, non-fatal shooting of [redacted] by Los Angeles County Sheriff's Department (LASD) Detective Jesse Lucero.[1] We have determined that Detective Lucero acted lawfully in self-defense and in defense of others.

The District Attorney Command Center was notified of this shooting at 1:30 a.m., on January 25, 2015. The District Attorney Response Team (DART), consisting of Assistant Head Deputy District Attorney Shannon Presby and District Attorney Senior Investigator [redacted] responded to the scene. They were given a briefing of the circumstances surrounding the incident and a "walk-through" of the shooting scene.

The following analysis is based upon investigative reports, analyzed evidence reports and witness statements taken during the investigation by the LASD and submitted to this office by Detectives Kathleen Gallagher and Phillip Guzman, LASD Homicide Bureau. No compelled statements were considered for purposes of this analysis.

FACTUAL ANALYSIS

On January 24, 2015, at approximately 8:37 p.m., the East Los Angeles Sheriff's station received a 9-1-1 call from [redacted] reporting a vandalism at the [redacted] located at [redacted] in East Los Angeles. [redacted] was [redacted] as a [redacted] in the market when he became suspicious of a male standing outside the market wearing a dark "hoodie" who appeared to be holding an object at his side. When [redacted] stepped outside the store to investigate a second male ordered him to go back inside the store. [redacted] described the

[1] [redacted] was 16 at the time of this incident.

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two males as "gangsters" and saw them run to a white Mitsubishi Montero. After the two males ran to the Montero, the vehicle pulled up adjacent to the front door of the market and the driver pointed something at [redacted] believed that the object was a firearm but was not certain because the object was covered with fabric. [redacted] stated he was afraid that he was going to be shot.

As the Montero drove away from the market, [redacted] noticed there was something hanging off the back of the vehicle. [redacted] saw the Montero traveling south on Record Street toward Whittier Boulevard. After the Montero drove off, [redacted] saw that the individuals had written the letters "ESV KKR" on the market wall.[2]

Detectives Jesse Lucero and Jesus Mora were on duty and assigned to a gang suppression unit. They were driving a black and white marked LASD patrol car. Lucero and Mora were both wearing green LASD jackets clearly marked with LASD insignias. Lucero was driving and Mora was seated in the right front passenger's seat.

A few minutes after hearing the 9-1-1 operator broadcast the details of [redacted] call, Lucero and Mora spotted a white Montero turning north from Olympic Boulevard onto Indiana Street.[3] Lucero saw that the rear wiper was hanging down from the rear window. Lucero followed the Montero and activated the police car's overhead lights. The Montero stopped in the intersection of Indiana and Dennison Streets. Lucero saw activity inside the cabin of the Montero and then saw a male, later identified as [redacted] exit from the right rear door holding a "Tech-9" firearm with a high capacity magazine. [redacted] ran east on the north sidewalk of Dennison Street while the Montero drove north on Indiana Street. Mora also saw [redacted] running with the Tech-9 firearm and heard Lucero yell "He has a Tech-9!"

Lucero and Mora followed [redacted] in their patrol car. Lucero yelled at [redacted] to "stop" but [redacted] continued to run from the detectives. Mora saw [redacted] manipulating the slide on the Tec-9 as he ran. When [redacted] reached approximately mid-block on Dennison Street between Alma and Hicks Avenues, he turned to his right and pointed the firearm at Lucero and Mora. Believing that [redacted] was about to shoot at him and Mora, Lucero fired three rounds from his service weapon though the open driver's side window at [redacted]

[redacted] resumed running east on Dennison Street and then ran north on Hicks Avenue. Lucero stopped his vehicle at the intersection of Dennison Street and Hicks Avenue and exited the driver's side door. Mora exited the passenger's side door. Both detectives saw [redacted] who was approximately 25 yards ahead of them, look over his right shoulder and turn toward them with both hands gripping the gun. Lucero fired several more rounds at [redacted] and moved behind a wall to shield himself. Mora also sought cover.

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[2] The letters ESV stand for "East Side Vario" and the letters KKR refer to the "King Kobra" criminal street gang. The location tagged, the Reynoso Market, is in rival gang territory.
[3] This location is approximately 1.2 miles from the Reynoso Market.
[4] Lucero was armed with a Heckler and Koch USP .45 caliber semi-automatic firearm.

[redacted] continued north on Hicks Avenue. Lucero saw him attempting to manipulate the firearm, and fired several more times at [redacted]. [redacted] ran further north on Hicks Avenue and entered Salazar Park traveling east. [redacted] was still holding the firearm.

A containment was set up around the area of Salazar Park. [redacted] was eventually discovered hiding inside a clothes dryer in the backyard of a residence located at [redacted] South Townsend Avenue. An Intratec model TEC-DC 9 mm assault weapon was recovered from the top of the clothes dryer.

[redacted] suffered a superficial graze wound to his left ear, which was medically treated at the scene. He has been charged in a juvenile proceeding with assault with a machine gun on a police officer in violation of Penal Code § 245(d)(3). A fitness hearing is pending in that matter.

In an interview with LASD Homicide detectives, [redacted] admitted that he was a member of the "King Kobras" street gang. [redacted] admitted he exited the Montero with the firearm when the police were attempting to stop the vehicle. [redacted] initially denied being involved in the vandalism incident at the [redacted], but subsequently admitted that he acted as the "lookout" while another person tagged the wall. When asked why the occupants of the Montero had a firearm in the vehicle, [redacted] stated that it was possibly present because they were in a rival gang's territory. [redacted] denied pointing the gun at the deputies but admitted to turning to look at the deputies while holding the gun with two hands.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense, if it reasonably appears that the person claiming the right of self-defense actually and reasonably believed that he was in imminent danger of great bodily injury or death. *See*, Penal Code § 197; People v. Randle (2005) 35 Cal.4th 987, 994 (overruled on another ground in People v. Chun (2009) 45 Cal.4th 1172, 1201); People v. Humphrey (1996) 13 Cal.4th 1073, 10821; CALCRIM No. 505.

In protecting himself a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent imminent injury. CALCRIM No. 505.

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." People v. Collins (1961) 89 Cal.App.2d 575, 589.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight…The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about

the amount of force that is necessary in a particular situation." Graham v. Conner (1989) 490 U.S. 386, 396-397.

CONCLUSION

The evidence examined shows that [redacted] participated in a gang motivated vandalism at the Reynoso Market and then, when the police attempted to stop the Montero, ran from Lucero and Mora holding an assault weapon. As Lucero and Mora pursued, [redacted] appeared to be manipulating the Tech-9 in order to make it ready to fire. [redacted] pointed the Tech-9 at Lucero and Mora prompting Lucero to fire at [redacted] After running a short distance, [redacted] again turned toward the deputies holding the Tech-9 with both hands causing Lucero to again fire at [redacted] Based on [redacted] actions in manipulating the Tech-9 and pointing the weapon at Lucero and Mora, Lucero's belief that [redacted] posed a danger of death or great bodily injury to him and his partner was reasonable. Accordingly, Lucero's decision to fire his service weapon in order to end the deadly threat posed by [redacted] was justified.

We conclude that LASD Detective Jesse Lucero acted lawfully in self-defense and in defense of his partner. We are closing our file and will take no further action in this matter.

Very truly yours,

JACKIE LACEY
District Attorney

By

SHANNON PRESBY
Assistant Head Deputy District Attorney
(213) 974-3888

c: Detective Jesse Lucero, #[redacted]

TABLE OF CONTENTS
SH2373483

INTERNAL AFFAIRS BUREAU

INVESTIGATIVE SUMMARY ADDENDUM

SH 2373483

SUBJECT: **JESSE LUCERO**
DEPUTY, #[redacted]

DATE(S) / TIME OF INCIDENT: **JANUARY 24, 2015**

LOCATION: **3900 Block of Dennison Street, East Los Angeles**

ALLEGATIONS:

This investigation was initiated due to Suspect Hernandez' allegation of force used during his arrest. While being interviewed by Homicide Detectives Phillip Guzman and Kathy Gallagher, Suspect [redacted] alleged force was used during his arrest. The initial Internal Affairs Bureau investigation case book, regarding this investigation, was submitted and approved on August 16, 2016.

SYNOPSIS:

On August 16, 2016, the Internal Affairs investigative report was completed, submitted and approved. The purpose of this addendum is to provide additional witness statements regarding the allegation of force used during the arrest of Suspect [redacted] **[Homicide Transcripts page 15].** On January 16, 2016, Internal Affairs Bureau Sergeant David Ladjevic discovered Suspect [redacted] alleged force was used on him during his arrest. During a review of the digital audio recording of Suspect [redacted] interview with Homicide Detectives Guzman and Gallagher, Suspect [redacted] alleged deputy personnel stepped on his head and back with their feet and knees. The purpose of the interviews was to gather additional information regarding the alleged use of force.

See the attached verbatim interview transcripts for more information and precise wording.

INVESTIGATION:

WITNESS STATEMENTS

WITNESS RUSSELL BOUCHER

Witness Russell Boucher was interviewed on August 4, 2016, at 0703 hours, by Internal Affairs Bureau Sergeants David Ladjevic and Ben Torres. The interview took place at the Special Enforcement Bureau and was digitally audio recorded. **Refer to Internal Affairs Bureau Transcripts,** which are contained in this case book.

Witness Boucher said on January 24, 2015, he was a sergeant assigned to the Special Enforcement Bureau, Gray Team. He said the Gray Team responded to the East Los Angeles Station area regarding a deputy involved shooting and assisted K-9 with an area search for the outstanding suspect. He said the suspect was located hiding inside of a clothes dryer. He said the clothes dryer was covered by a blue tarp and a MAC-10 was on top of the dryer under the blue tarp.

> **IAB Note:** The weapon recovered was a Tec-9 semi-automatic pistol.

Witness Boucher said they gave verbal announcements to the suspect and opened the door of the dryer in order for the suspect to exit the dryer. He said the suspect exited the dryer on his own and laid down with his stomach on the ground. He said the suspect was handcuffed and taken into custody without further incident. He said at no time did he witness any deputy personnel place their feet on the suspect nor did he see any of the deputy personnel kick the suspect. **[Refer to Witness Boucher's transcripts].**

Witness Richard Diliberti

Witness Richard Diliberti was interviewed on August 4, 2016, at 0713 hours, by Internal Affairs Bureau Sergeants David Ladjevic and Ben Torres. The interview took place at the Special Enforcement Bureau and was digitally audio recorded. **Refer to Internal Affairs Bureau Transcripts,** which are contained in this case book.

Witness Diliberti said on January 24, 2015, he was assigned to the Special Enforcement Bureau, Gray Team. He said the Gray Team responded to the East Los Angeles Station area regarding deputy involved shooting. He said the Gray team assisted K-9 with an area search for the outstanding suspect.

Witness Diliberti said he was within the property where the suspect was located, however he was not at the location of the arrest. He said he did not see the suspect until he was escorted to the front of the location. Witness Diliberti said from his vantage point, he could not see the suspect being taken into custody.

Witness Diliberti said he did not witness nor was he told force was used during the arrest of Suspect [redacted] **[Refer to Witness Diliberti's transcripts].**

WITNESS JAMES PONSFORD

Witness James Ponsford was interviewed on August 4, 2016, at 0724 hours, by Internal Affairs Bureau Sergeants David Ladjevic and Ben Torres. The interview took place at the Special Enforcement Bureau and was digitally audio recorded. **Refer to Internal Affairs Bureau Transcripts,** which are contained in this case book.

Witness Ponsford said on January 24, 2015, he was assigned to the Special Enforcement Bureau, Gray Team. He said the Gray Team responded to the East Los Angeles Station area regarding a deputy involved shooting and assisted K-9 with an area search for the outstanding suspect.

Witness Ponsford said the suspect was located within a clothes dryer and was subsequently ordered out of the dryer. He said the suspect exited the dryer and was ordered to "crawl" back toward them. He said the suspect was handcuffed and he removed the tarp from the dryer in order to clear the area. He said when the tarp was removed, he saw a Tec-9 with a 30 round magazine laying on top of the dryer. He said the weapon appeared to be jammed and he waited for Operation Safe Streets detective's to take control of the weapon.

> **IAB Note:** A blue tarp was covering the clothes dryer prior to the deputies locating the suspect.

Witness Ponsford said as they conducted a search of the suspect, he observed several injuries to the suspect's face, hands and ear. He said during a conversation with the suspect, the suspect said he was shot in the ear. He said it appeared the other injuries sustained by the suspect appeared to be from falling and appeared to be "road" rash. He said Emergency Services Detail (ESD) paramedics rendered aid to the suspect at the scene.

Witness Ponsford said he did not place his feet on the suspect's back or head, nor did he witness other deputy personnel placing their feet on the suspect.

WITNESS RICARDO MUNOZ

Witness Ricardo Munoz was interviewed on August 4, 2016, at 0740 hours, by Internal Affairs Bureau Sergeants David Ladjevic and Ben Torres. The interview took place at the Special Enforcement Bureau and was digitally audio recorded. **Refer to Internal Affairs Bureau Transcripts,** which are contained in this case book.

Witness Munoz said on January 24, 2016, he was assigned to the Special Enforcement Bureau, Gray Team. He said he was notified via telephone regarding a deputy involved

shooting in East Los Angeles. He said he responded and was assigned to assist K-9 with an area search for the outstanding suspect.

Witness Munoz said he believed the suspect was located hiding in a clothes dryer by Aero Bureau personnel. He said after locating the suspect within the dryer, unknown deputy personnel opened the dryer door and the suspect crawled out toward them. He said the suspect laid on the ground in a prone position and was handcuffed.

Witness Munoz said he did not place his feet on the head or shoulders nor did he see any other deputy personnel place their feet on the suspect.

Witness Munoz said he observed scratches on the suspect's left arm, and his left earlobe was bleeding. He said the suspect was speaking to other personnel at the scene when he heard the suspect say that while fleeing the deputies, he fell and sustained the injuries to his arm.

WITNESS GRANT ROTH

Witness Grant Roth was interviewed on August 4, 2016, at 0755 hours, by Internal Affairs Bureau Sergeants David Ladjevic and Ben Torres. The interview took place at the Special Enforcement Bureau and was digitally audio recorded. **Refer to Internal Affairs Bureau Transcripts,** which are contained in this case book.

Witness Roth said on January 24, 2016, he was assigned to the Special Enforcement Bureau, Gray Team. He said they responded to the East Los Angeles Station area regarding a deputy involved shooting and he was assigned as the driver of the Armored Response Vehicle (ARV). He said his responsibility was to drive the ARV and to parallel the search team.

Witness Roth said he was in the ARV at the front of the location when the suspect was located. He said he exited the ARV and saw deputy personnel escorting the suspect toward the street. He said as the suspect was being escorted, he saw blood on his shirt which appeared to be coming from his ear. He said he also observed abrasions on his forehead and forearms.

Witness Roth said when Witness Giandomenico treated the suspect's injuries, the suspect told him the injury to his ear was from a gunshot and the abrasions were from falling while running from the deputies. He said the suspect also stated that when he fell, the gun discharged and a bullet went through his pants.

Witness Roth said he did not witness any force used on the suspect, nor did the suspect tell him about any force being used during his arrest. Witness Roth authored a memorandum regarding the actions of deputy personnel during the arrest of the suspect **[Exhibit A page 14].**

WITNESS DANIEL LEON

Witness Daniel Leon was interviewed on August 22, 2016, at 0940 hours, by Internal Affairs Bureau Sergeants David Ladjevic and Ben Torres. The interview took place at the Special Enforcement Bureau and was digitally audio recorded. **Refer to Internal Affairs Bureau Transcripts,** which are contained in this case book.

Witness Leon said on January 24, 2015, he was assigned to the Special Enforcement Bureau, Gray Team. He said they responded to East Los Angeles Station to assist K-9 during a perimeter search. He said during the perimeter search, the K-9 unit alerted to a yard and the suspect was located in a clothes dryer. He said the suspect was given verbal commands to exit the dryer and he complied. He said after the suspect exited the dryer, he was compliant and taken into custody.

Witness Leon said during the detention of the suspect, he did not put his feet on the suspect nor did he see any other deputy personnel place their feet on the suspect. During the interview, Witness Leon was asked if the suspect told him deputy personnel kicked him. Witness Leon replied, "Absolutely not."

WITNESS THOMAS GIANDOMENICO

Witness Thomas Giandomenico was interviewed on August 22, 2016, at 1005 hours, by Internal Affairs Bureau Sergeants David Ladjevic and Ben Torres. The interview took place at the Special Enforcement Bureau and was digitally audio recorded. **Refer to Internal Affairs Bureau Transcripts,** which are contained in this case book.

Witness Giandomenico said on January 24, 2015, he was assigned to the Special Enforcement Bureau as a medic supervisor. He said he responded to East Los Angeles to assist K-9 as medical support.

Witness Giandomenico said he was trailing the search team when the suspect was located. He said as K-9 swept the area, they saw shoes up against the glass of a front loading washing machine. He said they took a position of cover and ordered the suspect out of the washing machine. He said the suspect came out of the washing machine with his hands in the air and was ordered to the ground. He said the suspect laid on the ground face down.

> **IAB Note:** The search team consisted of the SEB Gray Team, K-9 and the K-9 handler.

Witness Giandomenico said when the suspect exited the washing machine, he saw a cut on the suspect's ear and a "bump" on his forehead. He said the suspect at first said he cut himself jumping a fence. After further conversation with the suspect, the suspect explained that he was shot in the ear during the foot pursuit. He said he treated the suspect for the injury sustained to his ear, however the bump was "so minor" it was not addressed.

Witness Giandomenico said during the arrest, the suspect did not notify him of deputy personnel using force on him or kicking him. He said if the suspect would have notified him of force being used during his arrest, he would have addressed it as a use of force.

Witness Giandomenico said he did not place his feet on the suspect nor did he see any other deputy personnel place their feet on the suspect.

WITNESS CURT MESSERSCHMIDT

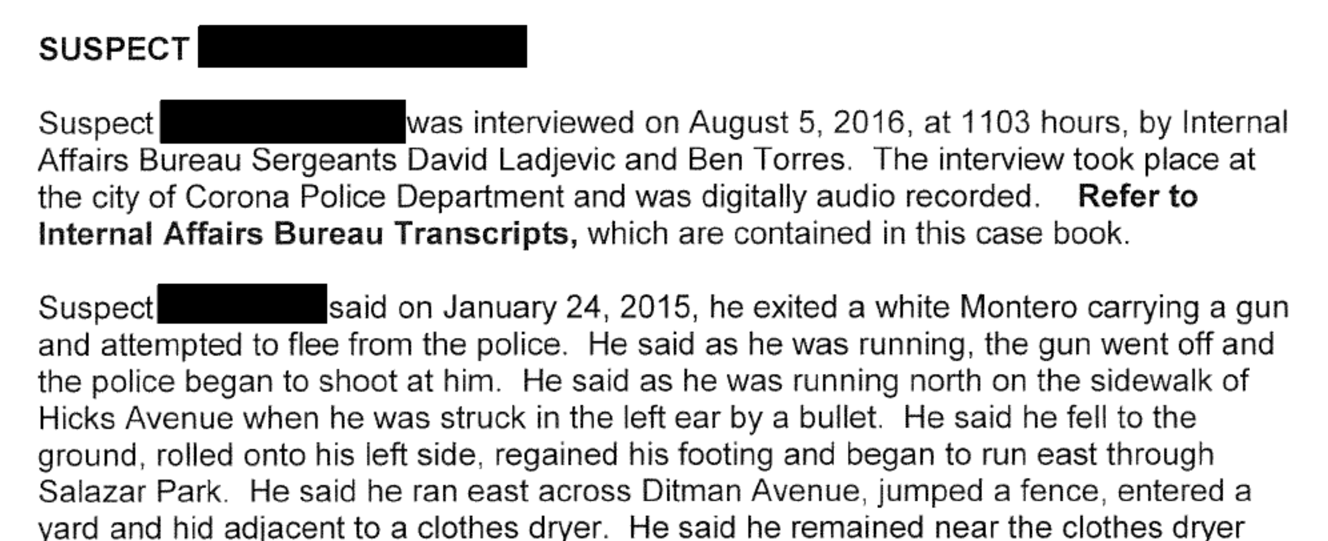
Witness Curt Messerschmidt was interviewed on August 24, 2016, at 1203 hours, by Internal Affairs Bureau Sergeants David Ladjevic and [redacted] The interview took place at Temple Sheriff station and was digitally audio recorded. **Refer to Internal Affairs Bureau Transcripts,** which are contained in this case book.

Witness Messerschmidt said on January 24, 2015, he was assigned as a K-9 handler for the Special Enforcement Bureau. He said he responded to East Los Angeles station in regard to a search for an armed suspect.

Witness Messerschmidt said during the search, his K-9 alerted to a clothes dryer. He said he saw a set of shoes against the window of the dryer at which time he alerted the other members of the search team. He said prior to him making announcements to exit the dryer, the suspect opened the door and exited the dryer.

Witness Messerschmidt said the suspect was compliant and followed the orders to lay on the ground after he came out of the dryer. He said the suspect laid on his stomach and was taken into custody. He said once the suspect was in custody, ESD treated him for minor injuries.

Witness Messerschmidt said he did not place his feet on the suspect nor did he see any other deputy personnel kick or place their feet on the suspect.



SUSPECT [redacted]

Suspect [redacted] was interviewed on August 5, 2016, at 1103 hours, by Internal Affairs Bureau Sergeants David Ladjevic and Ben Torres. The interview took place at the city of Corona Police Department and was digitally audio recorded. **Refer to Internal Affairs Bureau Transcripts,** which are contained in this case book.

Suspect [redacted] said on January 24, 2015, he exited a white Montero carrying a gun and attempted to flee from the police. He said as he was running, the gun went off and the police began to shoot at him. He said as he was running north on the sidewalk of Hicks Avenue when he was struck in the left ear by a bullet. He said he fell to the ground, rolled onto his left side, regained his footing and began to run east through Salazar Park. He said he ran east across Ditman Avenue, jumped a fence, entered a yard and hid adjacent to a clothes dryer. He said he remained near the clothes dryer

when he saw flashlights in the adjacent yard. He said he remained in the dryer for approximately 45 minutes to one hour.

Suspect [redacted] said the dryer door partially open until a K-9 nudged the door closed. He said he attempted to exit the dryer, however one of his feet was stuck and he could not move. He said the deputies continued to order him out of the dryer and eventually allowed him to remove his foot from the dryer.

Suspect [redacted] said when he exited the dryer he laid on his stomach and the deputies used their body weight to control him and handcuff him. He said the deputies placed their feet and knees on his back and head, causing his face to hit the ground. He said the deputies did not kick or stomp on his head or body.

Suspect [redacted] said he believed the deputies were "doing their job" during his arrest. He said he was taken to a local clinic for treatment for his injuries.

> **IAB Note:** Suspect [redacted] was transported to East Los Angeles Doctor's Hospital for treatment for his injuries and approval for booking